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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 257

FEDERAL CRUDE OIL CO., *Petitioner,*

v.

THE STATE OF TEXAS, *Respondent*

PETITION FOR WRIT OF CERTIORARI

To the Court of Civil Appeals for the Third Supreme Judicial District of Texas, at Austin, Texas, and

AUTHORITIES IN SUPPORT THEREOF

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To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your Petitioner, the Federal Crude Oil Company, is seeking a writ of certiorari to the courts of last resort in Texas against their action to the prejudice of Petitioner in denial of its rights under the Fourteenth Amendment of the Federal Constitution; and preliminary to the formal grounds presented herein it makes the following

Explanatory Statement

On the 23rd of April, 1901, certain business men taking advantage of the provisions of the Texas statute associated themselves together as a corporate body under the name Federal Crude Oil Company, and filed their petition with the Secretary of State, who, signing it in due form, approved it and collected for the State under the law several hundred dollars as the corporate charter fee, plus a franchise tax imposed by law as a prerequisite to the company's conducting its business for a period of one year. That established the corporation with the right to do business in the State.

Accordingly, it acquired certain tracts of land pursuant to its declared purposes of drilling and producing oil. Its efforts in the conduct of this business resulted in failure, and the next annual franchise tax beginning on the 1st of July, 1905, was not paid; and under the provisions of the State statute, the Secretary of State "forfeited its right to do business."

Shortly thereafter, to-wit, December 11, 1907, a suit being instituted against it, a judgment was rendered in the following terms:

> "It is therefore considered, adjudged and decreed that the incorporation known as the Federal Crude Oil Company, be and the same is hereby dissolved as a corporate body and the receiver in this cause, C. L. Rutt, is instructed to wind up the affairs of the said corporation as follows: It further appearing to the court from the report of the said receiver filed in this cause on the 11th day of December, 1907, that the only property belonging to said corporation is two small tracts of land in Jefferson County, hereinafter described, and that said tracts of land are of little value and that there is now due on said lands the state and county taxes for several years, and that at public sale said lands would not probably bring enough to pay said taxes and that plaintiff in this

case, J. F. Guilmartin, has offered to give $50.00 for said lands subject to all valid liens for taxes on same, and it further appearing to the court from the evidence in this cause that it is for the best interest of all parties that said offer be accepted and said lands sold and conveyed to said J. F. Guilmartin at private sale for said sum of money, and all parties being present in court and consenting thereto, it is therefore ordered by the court that the receiver, C. L. Rutt, be, and he is hereby authorized and instructed upon receipt of the sum of $50.00, to execute and deliver to J. F. Guilmartin a deed conveying all the right, title and interest of the Federal Crude Oil Company in and to the following described land:" (describing all its property). (~~P. R.—.~~ O. R. 54)

Persons claiming the Company's assets under this decree some years subsequently, learning the land was underlayed with large quantities of oil, went upon it and proceeded to appropriate the land and oil. By reason of the fact that the company's right to do business had been forfeited, the statute containing that provision declared that it could not sue in the courts of Texas.

For twenty-two years the corporation was *functus officio*,—all its rights as completely suspended as if its charter had been annulled.

From the date of that forfeiture the corporation in no manner, through its officers or otherwise, transacted any business in the State of Texas or elsewhere. The franchise tax, preceding the forfeiture, and 10 per cent interest thereon, and the penalty of 25 per cent for failing to pay it, was the only debt then existing against the corporation under the franchise tax law; and its assets and charter rights having been wiped out by the judgment of 1907, and the forfeiture of 1906, that charge remained unpaid against it until the 5th of June, 1928. At that time it conceded that it owed the State of Texas under the statute the sum of $3,543.75, being prin-

cipal, interest and penalty. Some of the corporation's old officers applied to the Secretary of State, as provided in the statute, to secure a revival of its right to do business so that it could sue in the courts of Texas to recover its properties taken from it under the judgment above quoted. On behalf of the corporation, they tendered this money to the Secretary of State and requested him to issue the Certificate of Revival. The statute (VERNON'S ANNOTATED TEXAS STATUTES, Vol. 20, Article 7092) thus provided:

> "Any corporation whose right to do business may have been forfeited, as provided in this chapter, shall be relieved from such forfeiture by paying to the Secretary of State * * * any time * * * after such forfeiture the full amount of the franchise tax and penalty due it, together with an additional amount of five per cent of such tax for each month, or fractional part of a month, which shall elapse after such forfeiture * * * "

And the statute then declared as follows:

> "When such tax and all penalties shall be fully paid to the Secretary of State, he shall revive the right of the corporation to do business within this State by cancelling the words, 'right to do business forfeited,' upon his record and endorsing thereon the word 'revived,' and the date of such revival."

The sum so tendered to the Secretary of State covered the franchise tax, 10 per cent interest and the 25 per cent penalty, *and* the "five per cent of such tax for each month * * * after such forfeiture." The Secretary of State accepted this money, but demanded the further sum of $6,986.25, making a total of $10,530.00, before he would issue the certificate of revival requisite to the corporation's right thereafter to do business and to sue in the courts of Texas. This additional demand for $6,986.25 was protested by the corpora-

tion as being an arbitrary, illegal demand without the sanction or authority of law. The Secretary of State refused to yield to this protest, and the corporation was compelled to pay it in order to obtain the revival of its right to do business in order to sue for its property.

Thereupon this protest was entered by the secretary upon record in the following language:

> "This is to further certify that the said The Federal Crude Oil Company protests the payment of and under protest pays $6,986.25 of said sum, the same being the annual franchise tax and 10 per cent and 25 per cent penalties for the years 1907 to 1929, contending that it is only required to pay the franchise tax for the year 1906 and the penalties of 10 per cent and 25 per cent, respectively, for said year, plus the amount of the revival fee of 5 per cent per month for the entire period from 1906 to this date." (P. R. 17.)

He then issued the certificate of revival, and the corporation instituted ~~this~~ suit to recover from the adverse claimants its properties taken under the above judgment.

It filed a suit in the District Court, and the judge of that Court held it could not maintain the suit, notwithstanding the revival, sustaining a plea in abatement. The corporation appealed and the Court of Civil Appeals for the Ninth Judicial District of Texas certified the question to the Texas Supreme Court. That Court in FEDERAL CRUDE OIL COMPANY v. YOUNT-LEE OIL COMPANY, 52 S.W. (2d) 56, held that it had a right to prosecute the suit, saying that these statutes are "purely revenue measures."

When the case was finally tried on its merits, adverse decisions were rendered by the courts of Texas, including the Supreme Court. A writ of certiorari was refused by this Court (FEDERAL CRUDE OIL COMPANY v. YOUNT-LEE, ET AL., 295 U.S., p. 741).

(Certiorari was also denied by this Court on a decree of prohibition refusing to reopen for fraud the previous judgment of the State court, FEDERAL CRUDE OIL COMPANY v. YOUNT-LEE OIL COMPANY, 299 U.S., p. 554.)

So stood this matter until *the Legislature of the State of Texas on the 9th day of May, 1941, granted to the Federal Crude Oil Company the right to sue the State of Texas for recovery of the moneys which it claimed had been unlawfully exacted from and paid by the corporation to the Secretary of State.* (P. R. 4.)

The Proceedings of the Texas Courts in This Case

The corporation clothed with power from the Sovereign through its Legislature brought this suit to recover this money, and the District Judge overruled the Attorney General's plea in abatement challenging its right to sue under this express authorization, and rendered judgment denying a recovery of the money thus paid under protest to the Secretary of State. (P. R. 12.)

The case was seasonably appealed to the Court of Civil Appeals at Austin, and that tribunal affirmed the judgment upon two grounds: *first,* that the corporation although concededly and admittedly transacting no business between 1905, when its rights were forfeited, and 1928, when it was revived, was liable for the annual franchise tax, plus 10 per cent interest per year and 25 per cent penalty, and 5 per cent per month addition, without regard to whether it had transacted any business in Texas; and, *second,* that the legislative act giving it the right to bring this suit was not effective because it owed a franchise tax in 1937 which had not been paid, and its right to do business had again been forfeited. (The opinion of that court was rendered February

17, 1943, rehearing denied March 10, 1943 (P. R.27), reported 169 S.W. (2d) 283. It is copied in full in the transcript presented here.) (P. R.22.)

The court cited as authority for its decision the *dictum* in the case of Ross Amigos Oil Company v. State (134 Texas 626, 138 S.W. (2d) 798), a case having no relevance to this case, in that that corporation and its directors in violation of the statute had transacted business and was subject to the annual tax, 10 per cent interest and 25 per cent statutory penalties therefor; whereas, in this case the Federal Crude Oil Company was innocent, and confessedly so, of having violated the statute, and had done no business for which it should be penalized or taxed. Nevertheless, the court citing said Amigos Oil Company case declared that

> "Regardless of whether or not they do business * * * this liability for franchise tax applied to all corporations required to pay same regardless of the forfeiture by the Secretary of State of the right of such corporation to do business." (P. R.25.)

The Supreme Court thereupon was seasonably petitioned to grant a Writ of Error and correct this decision of the Court of Civil Appeals. (P. R.24.) That Court with full jurisdiction of the matter refused the Writ of Error on the 14th day of April, 1943, thus making it the judgment of the highest court of the State, and the *dictum* of the Amigos case thus became the law of this case. (P. R.35.)

It, of course, was not reasonably thought or anticipated by your Petitioner that the Supreme Court would render a decision violative of the "due process" and "equal protection of the law" vouchsafed by the Federal Constitution. When it did so by importing into the Texas Statute taxes and penalties not provided by the Legislature in the Statute, to-wit, *against the existence of the corporation and not against*

its violation of law in the transaction of its business, the Petitioner seasonably filed its motion (April 27, 1943) for a rehearing challenging such decision as in violation of the due process of law and equal protection of the law guaranteed by the Fourteenth Amendment. (P. R. 36.) This motion, after being considered by the Supreme Court, was overruled on *May 12, 1943,* and the judgment of the intermediate appellate court thereby became the final judgment of the Supreme Court of the State. (P. R. 44.)

The Federal question here presented was, therefore, duly raised and presented below:

Missouri ex rel. Missouri Ins. Co. v. Gehner, 281 U.S. 313, 320, 74 L. Ed. 870;
Brinkerhoff-Faris Trust & Sav. Co. v. Hill, 281 U.S. 673, 678, 74 L. Ed. 1107, 1112;
Great Northern R. Co. v. Sunburst Oil & Ref. Co., 287 U.S. 358, 367, 77 L. Ed. 360, 367;
Saunders v. Shaw, 244 U.S. 317, 320, 61 L. Ed. 1163, 1165.

The Texas Taxation Statutes

The right to levy and collect taxes for any purpose under the Constitution of Texas is solely lodged in the Legislature. The courts can not enlarge these statutes and impose a tax of its own making. That this was done in this case will be now demonstrated. That the taking of this "person's" property or money by the Texas agencies contrary to the Tax Laws of Texas is a breach of due process of law and of the equal protection of the law under the Fourteenth Amendment, is manifest.

The writer finds no authority in any State of the American Union, and least of all in Texas, where a tax has been levied on any person, natural or artificial, with penalties for non-

payment thereof based upon a "franchise" tax or privilege *to exist.*

There is no Statute of Texas which taxes and penalizes a person, natural or artificial, for the right to exist.

There is no statute in Texas levying a tax and penalty for its nonpayment upon a naked charter of a corporation after the tax at the incipiency of its formation has been paid to create that artificial person, which when created is endowed with the legal rights of natural persons. And it can not be imported by any court when it does not appear in the Tax Statute of the only power authorized to tax *things, occupations, and privileges,* under the Constitution of Texas (Art. 8, Sec. 1). In other words, the only power given the Legislature by the Texas Constitution is to tax the *property, the business, the income,* the *occupations* and the *privileges* of its people, and not to tax their *persons*—their *being, life, existence.*

In VERNON'S TEXAS STATUTES, above cited, under *Title 122,* there are 209 pages of tax laws with their annotations dealing with every conceivable form of tax affecting natural and artificial persons. But there is no tax levied against the right to exist and the entire tax enactments of Texas from beginning to end of the title "Taxation" covers only *real* and *personal* and *mixed property,* a "poll tax from every person between ages of twenty-one and sixty years" (Art. 7046), *occupation taxes* from "peddlers" to "circuses," "baseball parks" to "firecrackers" (Art. 7047), *"gross receipts"* of corporations, *"gas"* and *"sulphur taxes."* And finally, Chapter Three, entitled "Franchise Tax" applicable to "domestic and foreign" corporations (Articles 7084-7097).

The Supreme Court of Texas (STATE v. G. H. & S. A. RY. Co., 100 Texas 153) declared that *a tax levied on a corporation for the exercise of the privilege of carrying on its business is an occupation tax* under the Constitution (Art. 8,

Sec. 1). This Court, in MICHIGAN v. MICHIGAN TRUST Co., 286 U.S. 334, 76 L. Ed. 1136, discussing franchise tax statutes observes the distinction between taxes on a "franchise to *exist* as a corporation" and "a franchise to *transact business.*" The Texas courts in this case, ignoring the statutes and their own previous decisions, have affirmed that this is a "franchise to exist as a corporation" and not a "franchise to transact business."

If there is a "franchise tax" against the 50-year charter life of the Federal Crude Oil Company, the Legislature never enacted such a tax and never provided a penalty for the nonpayment of such a tax. The court, therefore, cannot engraft such a tax upon the statute law of the State.

Attached to this paper are the Acts of the Legislature pertinent to this question under Chapter Three entitled "Franchise Tax." These statutes in this chapter cover corporations who obtain their life in Texas and those created by other states, and the franchise tax, penalties and interest are annually provided by equal terms for both classes of corporations, with the exception that an additional burden was originally placed upon foreign corporations affecting their business outside the state, in which this attempt to discriminate in this tax law in favor of the State corporations against the foreign, was stricken down by the United States Supreme Court in LOONEY v. CRANE COMPANY, 245 U.S. 178, 2 L. Ed. 230.

And the Supreme Court of Texas in AMERICAN REFINING Co. v. STAPLES, 269 S.W. 420, dealing with the franchise tax of a foreign corporation, said that

> "It should be measured by that portion of the gross assets which the gross receipts of the Texas business bear to entire gross receipts of the corporation, thus making basis for franchise tax actual capital used in state. This article should be so construed that franchise tax on

> foreign no par value stock corporations will be equitable in relation to tax imposed on other corporations considering amount of business transacted in the state; a "franchise tax" being a tax paid by a corporation for privilege of using its capital to transact business in state." (Note under Article 7085, VERNON'S ANNOTATED STATUTES, page 41.)

This article has always been construed, as other cases there cited show, to be a franchise tax on the business done in the state. It is not a tax on the existence of the corporation, namely, on its naked charter. (See CLARK v. ATLANTIC PIPE LINE CO., 134 S.W. (2d), p. 322.)

The Article last referred to provides that

> "* * * Every foreign corporation heretofore or hereafter chartered or authorized to do business in Texas, shall, on or before May 1st of each year, pay in advance to the Secretary of State a franchise tax for the year following * * * "

And again

> "Where a foreign corporation applying for a permit has theretofore done no business in Texas, such tax (franchise tax) shall not be payable until the end of one year from the date of such permit, at which time the tax shall be computed on that proportion of the authorized capital stock plus the surplus and undivided profits, if any, of such corporation."

And again

> "And the second payment of such franchise tax shall be made for the period intervening between the date of such first payment and the first day of May following, the proportion of authorized capital stock plus the surplus and undivided profits, if any, of such corporation to be the same proportion that the gross receipts

> from the Texas business for such period bear to the gross receipts of the said corporation from its entire business for the same period, and that, thereafter, such franchise tax shall be payable annually on the first day of May for the year succeeding * * * ."

This Article clearly defines the franchise tax of this Chapter as being a tax upon the exercise of the corporation's right to do business in Texas, and has so been construed by Texas courts. It does not purport to tax the existence of the corporation and terminates when the corporation has terminated its business in Texas. (CLARK v. ATLANTIC, *supra.)*

The entire chapter as is shown by the succeeding Article 7086 applies this tax against foreign and domestic corporations alike, and if the franchise tax can be claimed to mean a tax on the right to exist for one corporation, it must mean the same thing for the other.

It is repeatedly declared in all the Articles of this Statute that such tax is an *annual* franchise tax, manifestly covering the period of time when the exercise of the right to do business is made and terminating when the business of the corporation terminates.

Article 7091 clearly shows that the termination of the right to do business is visited by precisely the same consequences for both domestic and foreign corporations, the language being:

> "Any corporation, either domestic or foreign, which shall fail to pay any franchise tax provided for in this chapter when the same shall become due and payable (annually) under the provisions of this chapter, shall thereupon become liable to a penalty of twenty-five per cent of the amount of such franchise tax due by such corporation. If the amount of such tax and penalty be not paid in full on or before the first day of July thereafter, such corporation (domestic or foreign) shall for such default forfeit its right to do business in this State;

> * * * Any corporation whose right to do business shall be thus forfeited shall be denied the right to sue or defend in any court of this state * * * ."

And what is the consequence of violating this statute? This:

> "Each director and officer of any corporation (domestic or foreign) whose right to do business within this State shall be so forfeited shall, as to any and all debts of such corporation which may be created or incurred, with his knowledge, approval and consent, within this State, after such forfeiture by any such directors or officers, and before the revival of the right of such corporation to do business, be deemed and held liable thereon in the same manner and to the same extent as if such directors and officers of such corporation were partners."
>
> (Under this came the AMIGOS case, penalized and taxed for violating this law.)

The Texas Courts have here arbitrarily taxed and penalized the Federal Crude Oil Company's *charter life—existence*—to the last of its fifty-year period, a thing never done by the law-making power in the Tax Statutes (Art. 7085-6).

The Texas Courts in the teeth of the statute can not judicially tax the *charter life—existence*—of foreign corporations; but they must do so under the franchise tax statute or confess that the tax law, equally and expressly applicable to both, is not equally applied; thus violating the constitutional requirement of "equal protection of the law."

Not only so, but to tax and penalize the *charter life—existence*—of corporations and not to tax the *life—existence*—of all other persons is to violate not only this clause of the Fourteenth Amendment but also the Texas Constitution, that *"all taxes must be equal and uniform."* (Art. 8, Sec. 1.)

And when any tax collector,—in this case the Secretary

of State,—aided and abetted by any other agency of the State,—in this case its courts,—imposes on and exacts from any "person" a tax and penalty not laid down in the law by the only power authorized to do so, it is a denial of "due process of law."

Although immune from suit to redress the errors of its agents, the gracious Sovereign has here waived that immunity by legislative act and granted this Petitioner the right to sue it. But its judicial agency—the lower court—has here expressly denied obedience to that mandate, holding that Petitioner has no right to bring this suit, without regard to the justice of the cause.

The substance of the acts of such violation of the Federal Constitution contained in Petitioner's motion for rehearing are hereinafter assigned as grounds of jurisdiction and reasons for the granting of the Writ of Certiorari, which motion was by the Supreme Court of Texas in all things denied and overruled on the 12th day of May, 1943, and which order constitutes the finality of the judgment in said cause. (P. R. 44.)

GROUNDS OF THE SUPREME COURT'S JURISDICTION,

And Reasons for the Allowance of the Writ

First Ground

The Supreme Court of the United States has jurisdiction of this case for the reason that the decision of the Supreme Court of Texas in denying petitioner's motion for rehearing of its application for writ of error has denied to petitioner the due process of law guaranteed by the first section of the Fourteenth Amendment of the Federal Constitution, in this, that Article 7092 of the REVISED CIVIL STATUTES OF TEXAS providing for reinstating the right of a corporation to do

business, specifies for payment no franchise tax or penalties for any other year than for the year for which it was forfeited. And the Supreme Court of Texas in sustaining the action of the Secretary of State has arbitrarily added to this article of the statute payment of franchise tax and penalties for each year after the forfeiture, as a prerequisite for petitioner to be reinstated in its right to do business in Texas, just as if it had continuously engaged in business after the forfeiture of this right, notwithstanding the corporation had done no business after that time and was without assets to do business.

Authorities

Gaar Scott & Co. v. Shannon, 56 L.Ed. 510;
Arkansas Bldg. & Loan Co. v. Madden, 175 U.S. 269;
A.T. & S.F. Ry. Co. v. Thos O'Connor, 56 L.Ed. 438;
Collins v. State of Texas, 56 L. Ed. 439;
Bailey v. State of Alabama, 55 L. Ed. 191;
Waggoner Estate v. Wichita County, 71 L.Ed. 566.

Second Ground

This Court has jurisdiction of this case because the Supreme Court of Texas by refusing petitioner's application for writ of error, and denying its motion for rehearing thereof, has denied to petitioner the equal protection of the law guaranteed by said first section of the 14th Amendment of the Federal Constitution, in this: The Court of Civil Appeals, whose opinion the Supreme Court of Texas has approved, bases its opinion on dictum in the opinion of the Supreme Court of Texas in the case of Ross Amigos Oil Company v. State, reported in 138 S.W. (2d) 798, because that case was to collect a franchise tax and penalties for the years that the corporation, in violation of Art. 7091 of the civil statutes and Art. 141 of the penal code of Texas, continued to do

business, after forfeiture of its right to do business, and in so doing, under the provision of said Article 7091, it was liable therefor through its directors; while in the instant case a law-abiding corporation that did no business after its right to do so had been forfeited is, by arbitrary decision of the Supreme Court of Texas, required as a prerequisite under Art. 7092 (in order to be reinstated to do business legitimately in the future) to pay the yearly franchise tax and penalties just as had been charged to the corporation in the AMIGOS case, which had done business in violation of law, thereby visiting on the innocent the same penalty as on the guilty, in violation of the equal protection clause of the first section of the 14th amendment to the Federal Constitution.

Authorities

Clark v. Paul Gray, 306 U.S. 583, 83 L.Ed. 1001, and cases cited under first ground.

Third Ground

This Court has jurisdiction of this case because the Supreme Court of Texas, by its action in approving the opinion and judgment of the Court of Civil Appeals, has arbitrarily introduced and inserted into Art. 7092 of said Civil Statutes of Texas, a provision that this article does not, as provided by the terms of the statute, revive the right of a corporation to do business, but only revives the right of the corporation to sue and defend in the courts; and it is upon this arbitrary change of the statute made by the Supreme Court that the conclusion is based that petitioner (Federal Crude Oil Company) was due a yearly franchise tax, whether it did business or not, and in so concluding and deciding, this petitioner was denied its protection of due process of law under said 14th amendment of the Federal Constitution.

Fourth Ground

This Court has jurisdiction of this case because the opinion of the Court of Civil Appeals, approved by the Supreme Court of Texas in denying petitioner's motion for rehearing of its application for writ of error, disregarded the protection of the due process clause of the said 14th Amendent of the Federal Constitution in deciding that petitioner could not maintain this suit against the State of Texas under the Senate Concurrent Resolution adopted May 9th, 1941, because its right to do business had been forfeited theretofore in 1937 for nonpayment of its 1936 franchise tax, in this:— the legislative Act on the part of the State permitting Federal Crude Oil Company to bring this suit was an act of the sovereignty, the State of Texas, and the Texas courts had no power or authority to strike down and annul the same because the sovereign, acting through the legislature, is presumed to have known all the facts and circumstances and conditions and their effects, at the time of the passage of the Act; and is presumed to have had in mind all existing statutes and their effect, and to have waived any statutory inhibition in its favor prohibiting Federal Crude Oil Company from bringing suit.

Authorities

U. S. of America v. State of California, 297 U.S. 175, 80 L.Ed. 567;
Standard Oil Co. v. City of Marysville, 73 L.Ed. 856;
Borden's Farms Products Co. v. Peter G. Ten Eyck, 80 L.Ed. 669.

Fifth Ground

The Supreme Court has jurisdiction of this case because the decision of the Texas courts of last resort has denied the

petitioner the equal protection of the laws and has taken its property without due process of law, in violation of the 14th Amendment to the Federal Constitution, in that petitioner was entitled to the protection and benefit of Art. 7097, REVISED CIVIL STATUTES OF TEXAS, when it applied for reinstatement of its "right to do business," because immediately after its right to do business was forfeited a receiver was appointed and all of its properties taken into the custody of the District Court of Jefferson County, Texas, and under the orders of the Court its entire assets were sold for $50.00, which sum was not distributed among its stockholders but applied to court costs. (P.R. 9).

Authorities

Liggett Co. v. Lee, 77 L.Ed. 929, Sec. 12;
Raymond v. Chicago U.T. Co., 52 L.Ed. 78, Sec. 3;
Hurt v. Cooper, 110 S.W. (2d) 896;
Corpus Juris Secundum, p. 1063, Vol. 16, Sec. 527.

PETITIONER'S ASSIGNMENTS OF ERROR

Supplementary of, and Prayed to be Considered Upon the Granting of the Writ of Certiorari Upon the Merits of the Case, Petitioner Presents the following Assignments of Error

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First Assignment of Error

The Texas courts of last resort erred in holding that Federal Crude Oil Company was not entitled to have its right to do business revived, after same had been forfeited for its failure to pay its franchise tax by July 1, 1905, by paying to the Secretary of State "the full amount of the franchise tax and penalty due by

it, together with an additional amount of 5 per cent of such tax for each month or fractional part of a month after such forfeiture;" but was legally required to pay for such reinstatement the additional sum of $6986.25 as an annual franchise tax, with 10 per cent and 25 per cent penalties for the years 1907 to 1929, inclusive, during which time it owned no property and transacted no business, and in refusing to render judgment for Petitioner for said unlawfully exacted sums with 6 per cent interest thereon from June 5, 1928, and costs of suit.

Second Assignment of Error

The Texas courts of last resort erred in holding that although its right to do business had been forfeited for failure to pay its franchise tax, Federal Crude Oil Company had the right to continue to do business under its charter in this State.

Third Assignment of Error

The Texas courts of last resort erred in holding that by compliance with the provisions of Art. 7092 the Federal Crude Oil Company was only revived in its right to bring and prosecute a suit in the State courts, and not to do business.

Fourth Assignment of Error

The Texas courts of last resort erred in holding that the Federal Crude Oil Company did not have the right under Senate Concurrent Resolution No. 40, dated May 9, 1941, to institute this suit, because at the time the resolution was adopted its right to do busi-

ness in Texas had been forfeited for failure to pay its franchise tax for the year 1937.

(There is copied as an appendix hereto the several franchise tax statutes referred to in this petition.)

Respondent, the State of Texas, is represented by the Hon. Gerald C. Mann, Attorney General of Texas, of Austin, Texas, who is counsel of record.

WHEREFORE, your Petitioner most respectfully prays that a Writ of Certiorari be issued out of this Honorable Court directed to the Honorable Court of Civil Appeals for the Third Supreme Judicial District of Texas, at Austin, commanding that court to certify and forward to this Court for its review and determination, on a day certain therein to be named, a full and complete transcript of the record and all proceedings in the case of Federal Crude Oil Company v. the State of Texas, being No. 9294 on the docket of that court, wherein this Petitioner is designated as Appellant and the State of Texas as Appellee; and that the judgment of that court be reversed by this Honorable Court; and that the judgment of the District Court be reversed and judgment here rendered in favor of Petitioner against the Respondent, the State of Texas, for the sum of $6986.25 with 6 per cent legal interest per annum from June 5, 1928, thereon, and all costs.

And, since the proceedings of said Court of Civil Appeals have, by the refusal of your Petitioner's application for Writ of Error addressed to the Supreme Court of Texas, been in legal effect by that court approved, your Petitioner prays that like Writ of Certiorari be issued to that court (if under the facts of this record such be required), and that the relief hereinabove asked as against the order of that tribunal

approving as final the judgment and decree of said Court of Civil Appeals, be granted to your Petitioner, so that the wrongs and injuries inflicted upon it be by this Honorable Court revised, reviewed and corrected, and that it be given the relief as herein sought and prayed for.

Your Petitioner prays for such other and further relief in the premises as this Honorable Court, upon a hearing of this petition and of the cause, may deem just.

WILLIAM D. GORDON,
Beaumont, Texas,
Attorney for Petitioner

Of Counsel:
E. E. EASTERLING,
GEO. E. HOLLAND,
Beaumont, Texas

NOTE: There is filed with this Petition the requisite, duly authenticated and certified copy of the complete record in this cause, under the hand and seal of the clerks of the Court of Civil Appeals and of the Supreme Court of Texas.

Appendix

FROM VERNON'S ANNOTATED TEXAS CIVIL STATUTES, VOLUME 20

Article 7091—Page 44
Article 7092—Page 46
Article 7097—Page 48

"Art. 7091 (7399)—*Failure to Pay Tax*

Any corporation, either domestic or foreign, which shall fail to pay any franchise tax provided for in this Chapter, shall thereupon become liable to a penalty of twenty-five per cent of the amount of such franchise tax due by such corporation. If the amount of such tax and penalty be not paid in full on or before the first day of July thereafter, such corporation shall for such default forfeit its right to do business in this State; which forfeiture shall be consumated (consummated) without judicial ascertainment by the Secretary of State entering upon the margin of the record kept in his office relating to such corporation, the words, "right to do business forfeited," and the date of such forfeiture. Any corporation whose right to do business shall be thus forfeited shall be denied the right to sue or defend in any court of this State, except in a suit to forfeit the charter of such corporation. In any suit against such corporation on a cause of action arising before such forfeiture, no affirmative relief shall be granted to such corporation, unless its right to do business in this State shall be revived as provided in this chapter. Each director and officer of any corporation whose right to do business within this State shall be so forfeited shall, as to any and all debts of such corporation which may be created or incurred, with his knowledge, approval and consent, within this State, after such forfeiture by any such directors or officers, and before the revival of the right of such corporation to do business, be deemed and held liable thereon in the same manner and to the same extent as if such directors and officers of such corporation were partners." (Id.)

"Art. 7092 (7400)—*Notice of Forfeiture*

"The Secretary of State, shall during the month of May of each year, notify each domestic and foreign corporation which may be or become subject to a franchise tax under any law of this State, which has failed to pay such franchise tax on or before the first day of May, that unless such overdue tax together with said penalty thereon shall be paid on or before the first day of July next following, the right of such corporation to do business in this State will be forfeited without judicial ascertainment. Such notice may be either written or printed and shall be verified by the seal of the office of the Secretary of State, and shall be addressed to such corporation and mailed to the post office named in its articles of incorporation as its principal place of business, or to any other known place of business of such corporation. A record of the date of mailing such notice shall be kept by the Secretary of State. Such notice and record thereof shall constitute legal and sufficient notice thereof for all the purposes of this chapter. Any corporation whose right to do business may have been forfeited, as provided in this chapter, shall be relieved from such forfeiture by paying to the Secretary of State any time within six months after such forfeiture the full amount of the franchise tax and penalty due by it, together with an additional amount of five per cent of such tax for each month, or fractional part of a month, which shall elapse after such forfeiture; provided, that such amount shall in no case be less than five dollars. When such tax and all penalties shall be fully paid to the Secretary of State, he shall revive the right of the corporation to do business within this State by canceling the words, "right to do business forfeited," upon his record and endorsing thereon the word, "revived," and the date of such revival. If any domestic corporation, whose right to do business within this State shall hereafter be forfeited under the provisions of this chapter shall fail to pay the Secretary of State, on or before the first day of January next following the revival, the amounts necessary to entitle it to have its right to do business revived under the provisions of this chapter, such failure shall constitute sufficient ground for the forfeiture, by judgment of any court of competent

jurisdiction, of the charter of such domestic corporation." (Id.)

"Art. 7097 (7606)—*Corporations in Process of Liquidations*

"If a corporation is actually in process of liquidation, such corporation shall only be required to pay a franchise tax calculated upon the difference between the amount of stock actually issued and the amount of liquidating dividends actually paid upon such stock; provided, that the president and secretary of such corporation shall make affidavit as to the total amount of capital stock issued and as to the amount of liquidating dividends actually paid and that such corporation is in an actual bona fide state of liquidation." (Id.).

Encl.

END OF A CASE